

**7.1 Motion Practice.** All miscellaneous motions, applications, requests, and petitions are filed and considered under this rule. Unless this rule states otherwise, a party who does not follow this rule may be considered to have abandoned in whole or in part that party's position on the pending motion.

**(a) Supporting a Motion.** A moving party must state the basis for the motion and the specific relief requested.

**(1) Supporting Brief.**

**(A) Substantial Issue of Law.** A motion raising a substantial issue of law must be supported by a brief filed and served together with the motion. The brief must be separate from, and not attached to or incorporated in, the motion or index of evidence. The brief must concisely state the reasons for the motion and cite to supporting authority. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue. The brief must not recite facts unless supported as described in Nebraska Civil Rule 7.1(a)(2).

**(B) No Substantial Issue of Law.** A brief is not required if (i) a motion raises no substantial issue of law and (ii) relief is within the court's discretion. Examples include motions to which all parties consent, to withdraw as counsel to a party, for an extension of time, or for leave to proceed in forma pauperis. If the court concludes that a motion raises a substantial issue of law, however, it may treat the failure to file a brief as an abandonment of the motion.

**(2) Evidence and Evidence Index.**

**(A) Factual Support.** If a motion requires the court to consider any factual matters not stated in the pleadings, when filing the supporting brief the moving party must also file and serve supporting evidentiary materials not previously filed. A factual assertion in the motion and the supporting brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the moving party relies.

**(B) How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of

the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.

- (C) **Required Affidavit.** An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.

(b) **Opposing a Motion.**

(1) **Opposing Brief.**

- (A) **Form and Content.** The party opposing a motion must not file an "answer," "opposition," "objection," or "response," or any similarly titled responsive pleading. Rather, the party must file a brief that concisely states the reasons for opposing the motion and cites to supporting authority. The brief must not recite facts unless supported as stated in Nebraska Civil Rule 7.1(b)(2).
- (B) **Time for Filing.** A brief opposing a motion to dismiss or for summary judgment must be filed and served within 21 days after the motion and supporting brief are filed and served. A brief opposing any other motion must be filed and served within 14 days after the motion and supporting brief are filed and served.
- (C) **Effect of Failure to File.** Failure to file an opposing brief is not considered a confession of a motion but precludes the opposing party from contesting the moving party's statement of facts.

(2) **Evidence and Evidence Index.**

- (A) **Factual Support.** When filing the opposing brief, the opposing party must also file and serve supporting evidentiary material not previously filed. A factual assertion in the opposing brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the

opposing party relies.

- (B) **How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) **Required Affidavit.** An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.
- (c) **Replying to Opposing Briefs and Evidence.** The moving party may file a reply brief and index of evidence within 7 days after the opposing party files and serves the opposing brief. The reply brief may not merely repeat the moving party's initial arguments, but rather must address factual or legal issues raised in the opposing brief. No party may file further briefs or evidence without the court's leave. If the moving party does not file an initial brief, it may not file a reply brief without the court's leave.
- (d) **Request for Oral Argument or Evidentiary Hearing.** Any request for oral argument or for an evidentiary hearing by a moving party must be included in the motion or else presented by a separate motion filed no later than the deadline for filing a reply brief. Any request for oral argument or for an evidentiary hearing by an opposing party must be presented by a motion filed no later than the deadline for filing an opposing brief. In general the court does not allow oral argument or evidentiary hearings on motions. The party requesting oral argument or an evidentiary hearing must state (1) why argument or a hearing is necessary and (2) an estimate of the time required for the argument or hearing.
- (e) **Request to Present Oral Testimony.** A party failing to request the opportunity to present oral testimony consents to the motion's submission without oral testimony. No oral testimony is allowed without the court's prior leave.
- (f) **Submission of Motion.** Unless the court grants leave for oral argument, a

motion is submitted on the briefs and any evidence filed when the time limit specified in Nebraska Civil Rule 7.1(c) expires.

- (g) **Procedures for Summary Judgment Motions.** See Nebraska Civil Rule 56.1.
- (h) **Extensions of Time for Filing or Responding to Motions.** See Nebraska Civil Rule 6.1.
- (i) **Discovery Motions.** To curtail undue delay in the administration of justice, this court only considers a discovery motion in which the moving party, in the written motion, shows that after personal consultation with opposing parties and sincere attempts to resolve differences, the parties cannot reach an accord. This showing must also state the date, time, and place of the communications and the names of all participating persons. "Personal consultation" means person-to-person conversation, either in person or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails is also personal consultation for purposes of this rule upon a showing that person-to-person conversation was attempted by the moving party and thwarted by the nonmoving party.
- (j) **Conference Telephone Calls.** The judge may conduct a motion hearing by telephone or video conference.
- (k) **Certificate of Service.** All motions, briefs, and evidence indexes require a certificate of service under Nebraska Civil Rule 5.4.